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Prelim Draft

PROPOSED POLICIES ON REDUCING UNAUTHORIZED DISCLOSURES

A. Scope of Proposed Policies

At the outset, it must be determined which kinds of information will be addressed by the proposed policies set forth below. Will the policies reach:

- (1) all classified information;
- (2) all classified intelligence information;
- (3) all classified information which might compromise specific intelligence sources and methods; or
- (4) only that classified information which actually identifies specific intelligence sources and methods?

(To the extent that the category of classified information which is ultimately addressed by these proposed policies is narrower than the category of all classified information, the practices and procedures established under these policies should not be construed to limit the ability of departments or agencies to take appropriate action with respect to any unauthorized disclosures of classified information not covered by these policies.)

B. Authorized Disclosures Policy

This policy would cover press backgrounding and ad hoc "authorized" disclosures. It would attempt to systematize our ad hoc declassification and press backgrounding practices. The elements of this policy would include:

- (1) Requiring the agency head or senior designee to approve backgrounding to media representatives;
- (2) Requiring the agency head or senior designee to ensure prior coordination with the Director of Central Intelligence of any ad hoc declassification or other release of classified intelligence information outside the Government so that any release which is made does not compromise intelligence sources and methods; and
- (3) Strict enforcement of the "third agency" rule on release of classified information.

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C. Press Contacts Policy

This policy would implement the Authorized Disclosures Policy by establishing a requirement and process for recording press contacts, which would specifically cover press backgrounding. The elements of this policy would include:

- (1) Documenting all press backgrounding sessions, including telephone conversations, in the agency's files for future retrieval and coordination purposes.
- (2) Restricting or controlling access of operational and policy personnel to news media, requiring pre-clearance by an authorized agency official, as well as documentation of meetings and telephone conversations, including subject matter discussed. Consider having such meetings in the presence of a public affairs officer of the agency.
- (3) Involving press spokesmen in setting and implementing policies related to backgrounding. Mandatory coordination with designated intelligence element of each agency prior to responding on intelligence-related questions.
- (4) Restricting access of news media personnel to controlled locations within agency spaces and providing escort when out of controlled areas.

D. Unauthorized Disclosure Identification and Investigation Policy

An interagency group consisting of senior level policymakers would confer each morning (via secure conference call) deciding which apparent unauthorized disclosures really are unauthorized disclosures which should be investigated (hopefully with a thought as to where the FBI might start looking). This group would then refer the unauthorized disclosures to the agency concerned for an internal investigation and to a senior Department of Justice official who could authorize an immediate FBI investigation. (The Attorney General, of course, could still initiate investigations on his own, as could other Cabinet officers.) This group would be supported by a small unauthorized disclosures analysis staff at the IC Staff (Unauthorized Disclosures Analysis Committee), which would provide support and do longer term analysis of unauthorized disclosures. The group would also designate individuals who could brief the FBI on the details of the unauthorized disclosures.

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To complement this interagency group which identifies unauthorized disclosures for investigation, there should be established a Department of Justice "strike force" which would have primary jurisdiction for investigating unauthorized disclosures that have been identified. This "strike force" would be authorized to pursue all avenues of investigation, including, where required, polygraph testing, interview of media personnel, and possible appearances before a grand jury by such personnel if a particularly egregious unauthorized disclosure has occurred resulting in great damage to the national security or to the lives of American personnel. If persons who make unauthorized disclosures can be identified by this process, then appropriate administrative and/or criminal sanctions can be undertaken.

The FBI, as part of a "strike force" or as a separate dedicated unit, would have a cadre of experienced, well-trained personnel specifically designated to investigate all unauthorized disclosures.

E. Unauthorized Disclosures Education Policy

This policy should require the preparation and distribution of a "primer" on unauthorized disclosures to alert Government employees to the various types of unauthorized disclosures and the various techniques used by reporters in gaining unauthorized information.

Moreover, this policy should include a plan for senior Administration officials to educate the public on the scope of the unauthorized disclosures problem and the damage that is caused by such disclosures in the face of likely media criticism.

F. Unauthorized Disclosures Legislation

Once the Administration has clearly defined the problem, established clear procedures for controlling ad hoc declassification and press contacts (including press backgrounders), and established policies for identifying and investigating disclosures made not in compliance with such procedures, then we would be in a stronger position to argue for the need for legislation to complement these efforts.

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